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CHURCH OF SCIENTOLOGY OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA,)	No. C420153
)	
Plaintiff,)	REPLY MEMORANDUM IN SUPPORT
)	OF JOINT MOTION TO MODIFY
GERALD ARMSTRONG, DOES 1 through 10, inclusive,)	PRELIMINARY INJUNCTION
)	
Defendants.)	
)	
MARY SUE HUBBARD,)	DATE: April 26, 1983
)	TIME: 9:00 A.M.
Intervenor.)	DEPT: 85
)	

I. INTRODUCTION

Defendant Armstrong has filed a document entitled Memorandum in Opposition to Motion to Modify Preliminary Injunction and Writ of Possession. In fact, this document is more a diversion than a substantive response to the motion, submitted jointly by plaintiff Church of Scientology of California and intervenor Mary Sue Hubbard, to modify the preliminary injunction in this case. Defendant's memorandum

1 is so filled with irrelevant assertions, scurrilous accusa-
2 tions and objectionable commentary, all masquerading as
3 facts, that it is virtually impossible, in the short amount
4 of time within which this reply memorandum must be prepared,
5 to adequately respond with particularity to each of these
6 claims. We wish to note initially, therefore, our objection
7 to the content of the Armstrong memorandum as well as many
8 of the accompanying exhibits. If the court believes that a
9 more particularized response to any of the assertions made
10 in defendant's memorandum is appropriate, or that an
11 evidentiary hearing on any such matters would be helpful,
12 movants are prepared to continue the hearing on this matter
13 until a more complete record is made. We do note, in
14 Section II, below, certain of defendants claims which,
15 beyond question, are irrelevant and immaterial to the
16 instant proceeding. Where such claims concern directly
17 substantive issues, they are addressed in the following
18 sections and also more particularly set forth in the
19 declaration of Tom Vorm attached hereto which responds
20 directly to assertions made in the Gerald Armstrong
21 declaration.

22 One of the diversions offered up by defendant in his
23 memorandum does, however, require preliminary attention.
24 Throughout the document, and in the accompanying exhibits,
25 defendant makes much of the question of whether he in fact
26 was permitted access to the personal documents of the
27 Hubbards which are at issue here. As we have stated in our
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1 original motion, this is a matter on which there is a
2 factual dispute and which will be resolved in the course of
3 this litigation. For purposes of the instant motion to
4 modify the preliminary injunction, however, resolution of
5 this issue is not necessary. Even assuming that
6 Mr. Armstrong did have permission, either from the Church of
7 Scientology or from the Hubbards, to take possession of the
8 Hubbards' private papers, that permission was only for the
9 limited purpose of compiling the archives and preparation of
10 background material for the L. Ron Hubbard biography. (See,
11 Declaration of Mary Sue Hubbard, attached to our original
12 motion). Further, this access was based upon Mr.
13 Armstrong's status as a member of the Sea-Organization, his
14 membership in and support for the goals of Scientology, and
15 his long history of commitment to that cause. As to these
16 matters, there is no dispute. The preliminary question pre-
17 sented for the court by this motion, and which defendant
18 Armstrong seeks to obscure, is whether Mr. Armstrong had any
19 even arguable right to take these materials with him when he
20 left the Church, to keep them in the face of a request by the
21 Church for their return, and to make them available to an
22 attorney who is in the process of suing the Hubbards and the
23 Church of Scientology in numerous lawsuits throughout the
24 country. As to this point, defendant Armstrong's response,
25 as will be discussed more fully below, is totally
26 inadequate.

1 II. DEFENDANT ARMSTRONG'S MEMORANDUM IS COMPOSED LARGELY OF
2 IRRELEVANT, IMMATERIAL AND REDUNDANT ASSERTIONS.

3 As noted above, defendant Armstrong's substantive
4 response to movant's motion is obscured by the very large
5 amount of extraneous material inserted in the memorandum and
6 attached thereto as exhibits. Below we list, for the
7 court's convenience, several of the claims which either have
8 no bearing on the issues currently before the court, or are
9 based on inadmissible evidence that cannot, therefore, be
10 considered by the court:

11 1. The whereabouts of L. Ron Hubbard.

12 Defendant makes repeated references to the lack of
13 contact by Mrs. Hubbard, various attorneys, and other indi-
14 viduals with L. Ron Hubbard. The fact that Mr. Hubbard has,
15 since approximately March, 1980, been in seclusion is not in
16 dispute. The lifestyle chosen by Mr. Hubbard is not a sub-
17 ject of this litigation. Here we are concerned, rather,
18 with Gerald Armstrong's possessory right, on the record in
19 this case, to materials which belonged to the Hubbards, were
20 taken from their personal storage, and which were formerly
21 in possession of the Church of Scientology of California.
22 Mr. Hubbard's views on this issue have been presented to the
23 court in the form of a letter asking that they be returned
24 to the Church. Mr. Hubbard is not, himself, a party to this
25 action so references to lack of contact with him have no
26 bearing here.

27 2. The "probate" matter.

1 Defendant alludes to the "probate" matter, without
2 proper explanation as to the nature of this case, except for
3 the assertion that the appointment of a trustee over
4 Mr. Hubbard's estate is "imminent." This is in reference to
5 a matter entitled In re the Estate of L. Ron Hubbard,
6 No. 47150, currently pending in Riverside Superior Court, in
7 which the estranged son of L. Ron Hubbard, Ronald DeWolf,
8 has petitioned the court, under Probate Code §260, to be
9 appointed trustee of a "missing person's" estate.
10 Mrs. Hubbard entered an appearance in that case to oppose
11 petition by Ronald E. DeWolf, formerly L. Ron Hubbard, Jr.,
12 on the grounds that (1) L. Ron Hubbard is not missing, (2)
13 Mr. Hubbard's estate is not in need of attention, super-
14 vision and care, (3) Ronald DeWolf, who has not seen his
15 father since 1959, and has been disinherited in
16 Mr. Hubbard's will, does not have standing to bring such a
17 petition and, (4) the petition was not brought to preserve
18 Mr. Hubbard's assets for his family and his heirs, as
19 required by Probate Code, but rather to preserve
20 Mr. Hubbard's assets for litigants who have sued
21 Mr. Hubbard. Mrs. Hubbard's motion for summary judgment is
22 set for May 27, 1983. Not only, therefore, is reference to
23 this action irrelevant to the instant proceeding, but the
24 portrayal of this proceeding to the court is grossly inaccur-
25 ate.

26 The same objection applies to the declaration of Ronald
27 DeWolf, submitted as Exhibit B to defendant's memorandum.
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1 This document is a copy of that submitted in support of
2 Mr. DeWolf's petition in the probate case. The declaration,
3 along with much of the petition, was stricken by the court
4 in that matter. The entire document was found to be irrele-
5 vant to that proceeding, and is no less irrelevant here.

6 It is also very important to note that all discovery in
7 the probate action noted above has been ordered sealed by
8 the court. This includes the deposition of the official of
9 the Bank of New England to which defendant refers as the
10 source of information regarding communications between
11 Mr. Hubbard and his attorney. (See Defendant's Memorandum
12 at p. 9). That this information should have been made
13 available to counsel for defendant is a gross violation of
14 the court's sealing order in that case.

15 3. References to "fraudulent" and "criminal" activity
16 by the Hubbards and the Church of Scientology.

17 Defendant also refers at various points in the
18 memorandum as well as throughout the accompanying exhibits,
19 to alleged "fraudulent" conduct by the Church and the
20 Hubbards. (See, e.g., Memorandum at p. 32, 35, 38). This
21 characterization of the activities of the Church is, of
22 course, irrelevant to the question of possessory interests
23 in the instant documents. The assertions are also false.
24 The Church of Scientology has been recognized by numerous
25 courts as a bone fide religion. This was acknowledged most
26 recently by Judge Marshall, United States District Judge, in
27 Peterson, et al. v. Church of Scientology of California, et
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1 al., No. CV-81-3259 (CBM), in ruling on defendant's summary
2 judgment motion of April 11, 1983. (An order in that case
3 has not yet been prepared. When available, the court's
4 order reflecting its ruling in this regard will be submitted
5 to the court.)

6 The similar references by defendant to plaintiff and
7 intervenor's "attempt to misuse the powers of the court" is
8 without substance, lacking in any factual support, and addi-
9 tionally irrelevant to this proceeding. At page 34 of
10 defendant's Memorandum it is alleged that "there is evidence
11 that the subject documents and tapes presently under seal
12 show activities which are in violation of federal laws." No
13 reference is made to any facts supporting such an allega-
14 tion. This claim again has no relationship to the issue of
15 possessory interest in the documents. Judge Cole recognized
16 precisely this point. At the September 24 hearing he
17 stated:

18 " . . . then maybe you are correct that this
19 is indeed a criminal enterprise and that
20 Mr. Heller ought to be defending his client
21 across the street in the Criminal Courts
22 Building.

23 But it doesn't have a darned thing to do
24 with what this case is all about as far as
25 I'm concerned. All this case is about is
26 whether I should restrain or order
27 Mr. Armstrong to return documents which he
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1 has taken or allegedly converted from the
2 plaintiff or in some manner limit his use of
3 those documents. That is absolutely all it
4 is, and all of this (indicating) mountain of
5 paper, which I was forced to wade through,
6 all of it, is 80 percent irrelevant.

7 I do not want to hear any arguments
8 about how good or how bad the Church of
9 Scientology is. It has nothing to do with
10 the price of my sheep here today."

11 (Hearing transcript, pp. 2-3).

12 Mrs. Hubbard is presently in federal custody because of
13 a conviction for obstruction of criminal investigation.
14 United States v. Mary Sue Hubbard, et al., No. 78-401
15 (D.D.C.). This, again, has no bearing on her possessory
16 interest in the documents in question. Obviously the fact
17 that she is in federal custody does not excuse others from
18 their obligations in relation to her property. Movants have
19 requested that the documents be returned to the Church of
20 Scientology for safekeeping, under the control of
21 Mrs. Hubbard, through her attorney. (See Joint Memorandum
22 at p. 6).

23
24 III. DEFENDANT HAS FAILED TO DEMONSTRATE ANY POSSESSORY
25 INTEREST IN THE DOCUMENTS.

26 It is clear that the court, in making an evaluation
27 regarding a preliminary injunction, must consider, among
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1 other factors in balancing the equities in the case, the
2 probability of plaintiffs' ultimately prevailing in the
3 matter. The preliminary injunction may issue where there is
4 a reasonable probability that plaintiff will be successful
5 in the assertion of his or her rights. See Weingand
6 v. Atlantic Savings and Loan Association (1980) 1 Cal.3d
7 806; West Coast Construction Co. v. Oceano Sanitary District
8 (1971) 17 Cal. App. 3d 693. The threshold question, there-
9 fore, is whether Mr. Armstrong has demonstrated any right to
10 possess these documents sufficient to bring to bear the
11 balancing of the equities.

12 Defendant bases his claim on an alleged contract of
13 employment between himself and L. Ron Hubbard. He states,
14 "defendant Armstrong became the agent/employee of Hubbard
15 with respect to existing documents and any documentation he
16 would obtain for the biography project and archives."
17 (Defendant's memorandum, p. 17-18). He recognizes that
18 there was no actual signed contract of employment but con-
19 tends that the "acceptance" of a so-called "petition" to
20 Mr. Hubbard asking permission to collect archives materials
21 is sufficient to show a contractual relationship. He then
22 contends, "[t]he fulfillment of the contract is essentially
23 the completion of the biography in that defendant
24 Armstrong's employment would then no longer be required."
25 (See, however, Armstrong deposition transcript of August 17,
26 pp. 20 and 67 in which Mr. Armstrong admits that he has no
27 right to possession of the documents and that they belong to
28 L. Ron Hubbard).

1 Defendant's contention appears to be that he entered
2 into agreement with Mr. Hubbard to collect the biography
3 material and will not have completed his commitment to
4 Mr. Hubbard until that biography is completed. Conveniently
5 omitted from this analysis, even assuming for purposes of
6 the present argument that such a contract of employment
7 could be implied, are the following: (1) Mr. Armstrong
8 gained that position only by virtue of his role as a staff
9 member for the Church of Scientology and member of the Sea
10 Organization; (2) Mr. Armstrong abandoned his Church posi-
11 tion, voluntarily left his job with the Church, severed all
12 ties with the Church and the Hubbards, is hostile to the
13 Church and Mr. Hubbard, and has collaborated with
14 individuals involved in litigation against the Church and
15 Mr. Hubbard; (3) halted his work on the biography project
16 shortly after leaving the Church, and sent the documents he
17 had obtained by virtue of his Scientology post, to attorney
18 Michael Flynn, the principal attorney representing litigants
19 against Mr. Hubbard and the Church. Under these circum-
20 stances it is inconceivable that Mr. Armstrong could
21 seriously take the position that he is continuing to fulfill
22 his responsibilities to Mr. Hubbard.

23 The transparency of Mr. Armstrong's position is further
24 shown by his contention that his purpose in turning the
25 materials over to his attorneys was to "give him an oppor-
26 tunity to inquire as to the rights of the third party,
27 plaintiff Scientology, who sought their return."
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1 (Defendant's memorandum at p. 25). In fact, Mr. Armstrong
2 has on several occasions admitted that he actually kept the
3 documents for a different purpose -- in order to have some
4 leverage against the Church who he allegedly feared might
5 try to harm him. (See Armstrong deposition transcript,
6 August 17, 1982, p. 69, "I did it on the basis of threats
7 against me and the acts against me by the Church of
8 Scientology . . ." and, "I hope to bring to light the truth
9 and perhaps put an end to the harassment . . ." Also see
10 pp. 98-99, 100). To suggest that he sent these documents to
11 Michael Flynn in order to protect the possible rights to the
12 documents of the Church of Scientology, as asserted by the
13 defendant, is to ignore reality, not to mention
14 Mr. Armstrong's previous statements on the subject.

15 Indeed, defendants "contract" theory is nothing more
16 than a manipulation of terms in order to find some legal
17 justification for his refusal to return the documents to
18 those who have a rightful claim to possession. Defendant
19 acknowledges the letter from L. Ron Hubbard to the court
20 requesting that these documents be returned to the Church.
21 The suggestion that reference in Mr. Hubbard's letter to the
22 "Church" does not mean plaintiff Church of Scientology of
23 California is absurd. As Mr. Armstrong knows, the archives
24 in question are maintained by the Church of Scientology of
25 California, Mr. Armstrong was living and working at the
26 facilities of the Church of Scientology of California, the
27 only Church that is a party to this lawsuit is the Church of
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1 Scientology of California, the materials were collected from
2 the Gilman Hot Springs property owned by the Church of
3 Scientology of California. No one could seriously believe
4 that when Mr. Hubbard sends a letter to this court asking
5 that the documents be returned to the Church, he is somehow
6 referring to an entity other than the plaintiff Church of
7 Scientology of California.

8 Finally, even if we were to accept defendant's theory
9 of contract of employment giving him a right to possess
10 these documents, such a contract would certainly not entail
11 the right to do with these materials whatever Mr. Armstrong
12 wished. Even if Mr. Armstrong had the right to maintain
13 these materials on the Church premises, and even to trans-
14 port them to Mr. Garrison, he obviously did not have the
15 right, within the scope of any contract of employment, to
16 keep these documents for his own use, make copies of them,
17 send them to his attorney, make the contents public, and
18 engage in other activities contrary to the purpose for which
19 he ostensibly did gain access. Such a suggestion would be
20 similar to saying that a department store employee has the
21 right to take home with him the pants, shirts and suits that
22 he sells to the public, and indeed, wear them, give them
23 away, and store them in his closet. Would not an employee
24 taking such a position be required to return this clothing
25 to the department store, pursuant to a preliminary injunc-
26 tion, pending outcome of litigation between the store and
27 this former salesperson? Under similar circumstances, this
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1 court should require the return of the documents in question
2 to the Church and Mrs. Hubbard.

3
4 IV. THE BALANCE OF EQUITIES DOES NOT SUPPORT DEFENDANT'S
5 POSITION.

6 We have noted above that the defendant comes before the
7 court on this issue with an extremely weak claim of
8 possessory interest in the documents in question. Of that
9 there can be little question. Given this fact, he has very
10 little in the way of equity to be balanced against the
11 rights and interests of plaintiff and intervenor. Indeed,
12 defendant fails to point to even one form of injury he per-
13 sonally would suffer if the materials were returned the
14 Church. Instead, he contends that this court should con-
15 sider "the interests of other litigants and state and
16 federal agencies" in claims that these documents are rele-
17 vant to other proceedings in other jurisdictions and there-
18 fore must be maintained by the court so that other litigants
19 can have access to them. (See defendant's memorandum at
20 p. 33). This, however, is not the law. The question on a
21 preliminary injunction is whether "a greater injury will
22 result to the defendant from granting the injunction than to
23 the plaintiff from refusing it." (emphasis supplied).
24 Continental Baking Company v. Katz, 68 Cal.2d 512, 527
25 (1968). This court must, of course, balance the interests
26 of the respective parties before it. However, it requires
27 pure speculation to determine the question of a preliminary
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1 injunction on the basis of one party's unfounded contentions
2 about other litigation, investigations, and alleged past
3 activities of the Church and the Hubbards. Most of these
4 claims made by defendant are untrue. But irrespective of
5 the truth or falsity, claims regarding the production of
6 documents requested in other cases, claims that the Church
7 and Mrs. Hubbard will "go to any lengths to prevent the sub-
8 ject documents . . . from being used in litigation"
9 (defendant's memorandum p. 35), and a history by the Church
10 of "obstruction of discovery" are matters completely irrele-
11 vant to the issues currently before the court.

12 The movants have explained in their original memorandum
13 that of primary concern here is the continuing invasion of
14 the Hubbards' right of privacy as long as these personal
15 documents remain accessible (although that access is
16 limited) to third parties. The fact that the documents
17 under seal include personal communications between husband
18 and wife, attorney client communications, personal writings,
19 diaries and other such materials, is not in dispute. It is
20 clear that privacy rights are implicated by the exposure of
21 these materials. See Whalen v. Roe, 97 S.Ct. 869 (1977).
22 Indeed, communications made in confidence have long been
23 recognized as within the ambit of the constitutionally
24 protected right of privacy:

25 "I think a communication made in reasonable
26 confidence that it will not be disclosed, and
27 in such circumstances that disclosure is
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1 shocking to the moral sense of the community,
2 should not be disclosed in judicial
3 proceeding, whether the trusted person is or
4 is not a wife, husband, doctor, lawyer, or
5 minister." Edgerton, J. in Mullen v. United
6 States, 263 F.2d 275, 281 (D.C. Cir. 1958).

7 Defendant suggests that public exposure of these
8 documents would not be an invasion of privacy in that the
9 Hubbards "have voluntarily made public figures of themselves
10 . . ." (defendant's memorandum at p. 30). If this argument
11 were accepted, thousands of people in this country would
12 have no right of privacy. Merely becoming "public figures"
13 does not mean that the Hubbards have opened their marital
14 life to the public. It would be absurd, of course, to
15 suggest that the President of the United States, who makes
16 available to the public a great deal of his personal life,
17 and a large number of personal documents for historical
18 purposes, has, thereby, abandoned the right to maintain con-
19 fidential communications with his wife, or to maintain the
20 privacy of diaries and other such materials.

21
22 V. DEFENDANT'S CONTENTION REGARDING "UNCLEAN HANDS" IS
23 WITHOUT MERIT.

24 The defendant contends at §III, B, of his memorandum
25 that the doctrine of unclean hands prevents plaintiff and
26 intervenor from seeking equitable relief. It should ini-
27 tially be noted that defendant's affirmative defense of
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1 unclean hands raised in response both to plaintiff's com-
2 plaint and complaint in intervention, and was ordered
3 stricken, in both instances, by the court. The defendant
4 has attempted to raise again essentially the same claim.

5 Again defendant has made a number of gratuitous accusa-
6 tions, many of which are untrue. But the real point is that
7 none of these allegations relate to the instant proceeding.

8 In Fiberboard Paper Products Corp. v. Eastbay Union of
9 Machinists (1964) 227 Cal.App.2d 675, the court of appeals
10 explained the nature of the unclean hands doctrine as
11 follows:

12 "It is well settled in this state . . . that
13 it is not every wrongful act or even every
14 fraud which prevents a suitor in equity from
15 obtaining relief. The misconduct which
16 brings the clean hands doctrine into oppera-
17 tion must relate directly to the transaction
18 concerning which the complaint is made, i.e.,
19 it must pertain to the very subject matter
20 involved . . . [R]elief is not denied because
21 the plaintiff may have acted improperly in
22 the past or because such prior misconduct may
23 indirectly affect the problem before the
24 court . . . The misconduct must infect the
25 cause of action before the court . . . The
26 trial of the issue relating to clean hands

1 cannot be distorted into a proceeding to try
2 the general morals of the parties."

3 The alleged unclean hands raised here relates to
4 representations about the practices of a religious organiza-
5 tion, the Church of Scientology, the conviction of
6 Mrs. Hubbard arising out of actions which took place 5 years
7 ago, and similar claims. These obviously have nothing to do
8 with the issues before the court and the unclean hands
9 doctrine is totally inapplicable.

10
11 VI. THE PLAINTIFF AND INTERVENOR ARE NOT ATTEMPTING TO
12 RESTRICT MR. ARMSTRONG'S RIGHTS TO FREE SPEECH.

13 Finally, defendant contends that the modification of
14 the preliminary injunction sought here is overly broad in
15 that the plaintiff and intervenor seek to prevent dissemina-
16 tion of information obtained from the documents in question.
17 To clarify, we do not seek to restrict Mr. Armstrong from
18 exercising his right to speak about information gathered in
19 the course of his relationship with the Church. However,
20 Mr. Armstrong has admitted making copies of these materials,
21 sending them to his attorney, and perhaps to other parties.
22 We are concerned that even if the materials currently under
23 seal are returned to the Church and Mrs. Hubbard, copies of
24 the documents themselves, or information contained therein,
25 may find their way into the hands of other persons,
26 including the media. The privacy interests of the Hubbards
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1 which is a principal concern here would still be violated if
2 this information is disseminated.

3 It is clear, for example, that Mr. Armstrong's
4 attorneys have viewed these documents. They have
5 undoubtedly taken notes, transcribed portions of or other-
6 wise recorded, the information contained in at least some of
7 the documents. We seek here an order from the court that
8 such information, obtained from documents under seal, may
9 not be disseminated to third parties.

10 An example of the type of abuse we are concerned about
11 has been raised above. In the Estate of L. Ron Hubbard mat-
12 ter, all discovery is under seal, yet reference to the con-
13 tents of a deposition held in that case has now been placed
14 on the public record by counsel for defendant in this case.
15 It is clear that the good faith of the parties and their
16 attorneys is insufficient protection for the rights of pri-
17 vacy that are at stake here.

18
19 VII. CONCLUSION

20 For the reasons stated above, and in our original
21 motion and memorandum, the preliminary injunction should be
22 modified to return the documents currently under seal to the
23 Church, and to order that there be no dissemination of
24 information contained in those materials.

25 DATED: *April 22, 1983*

Respectfully submitted,
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